

## Digital Copier Lease and Maintenance Agreement

Agreement made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (hereinafter referred to as the "Effective Date"), by and between the \_\_\_\_\_ (hereinafter referred to as "AGENCY"), and \_\_\_\_\_, whose principal place of business is located at \_\_\_\_\_ (hereinafter referred to as "Contractor").

### WITNESSETH

WHEREAS, pursuant to O.C.G.A. § 50-25-4, the Georgia Technology Authority ("GTA") issued a Request for Proposal No. GTA-000119, soliciting proposals for the provisioning of digital copier equipment and installation and maintenance services for such equipment, as more particularly described therein ("RFP");

WHEREAS, Contractor submitted a proposal to GTA in response to the RFP ("Proposal");

WHEREAS, Contractor's Proposal was deemed by the GTA to be the proposal most advantageous to the State;

WHEREAS, Contractor and the GTA entered into that certain Digital Copier Agreement, effective on October 1, 2003 (hereinafter referred to as "Enterprise Contract").

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties agree as follows:

- Equipment and Services.** Pursuant to the terms and conditions of the Enterprise Contract, Contractor agrees to lease to AGENCY the equipment identified in the Equipment Schedule attached hereto as Exhibit A and incorporated herein by reference (collectively and individually, the "Equipment"). The Equipment Schedule may be amended to include any additional Equipment added hereto by written agreement of both parties. In addition, Contractor agrees to provide to AGENCY the installation and maintenance services (collectively and individually, the "Services") described in the Enterprise Contract, the RFP and the Proposal.
- Order of Precedence.** The contractual relationship between Contractor and AGENCY shall be governed by the following order of precedence: (i) the provisions of this Agreement, including all exhibits attached hereto and incorporated into this Agreement; (ii) if applicable, the governing RFP or other solicitation document (excluding Appendix B, Sample Contract); (iii) the Contractor's Proposal; and (iv) the Rules of the GTA, which are incorporated herein by reference.
- Term and Renewal.** The "Term" shall begin on the Effective Date and end as of the end of the then current fiscal year (July 1 - June 30). Thereafter, the Agreement may be renewed at the sole discretion of AGENCY on a year-to-year basis for up to \_\_\_\_\_ ( ) fiscal year periods. AGENCY may, at its sole option, renew as to all of the Equipment and Services to be provided hereunder or as to only selected Equipment and Services. The terms and conditions of this Agreement shall apply during any renewals of the Term.
- Shipping, Delivery and Return.** Contractor shall pay for packing, crating, and shipping of the Equipment to and from AGENCY and shall install the Equipment at AGENCY's premises at no cost to AGENCY. Shipment/Delivery shall be FOB: Destination. Unless title to the Equipment is transferred to the AGENCY as provided below, Equipment will be returned in the same mode of shipment unless otherwise mutually agreed upon. Equipment will be returned in the same condition as received, normal wear and tear excepted.
- Payment and Acceptance.** AGENCY agrees to pay Contractor for all undisputed amounts within thirty (30) days of receipt of invoice, provided that the Equipment and Services have been accepted by AGENCY as hereinafter provided. Contractor shall deliver the Equipment and/or perform any Services in accordance with the schedule set forth in the RFP or the time specified in a Purchase Order ("PO") issued by AGENCY (whichever is later). Unless otherwise agreed to by Contractor and AGENCY, Contractor shall provide written notification of completion of the delivery, or other performance of Services, to AGENCY ("Delivery Notice"). AGENCY shall have thirty (30) days from the date of receipt of the Delivery Notice to provide Contractor with written notification of acceptance or rejection due to unsatisfactory performance ("Acceptance Period"), and in the event of

acceptance by AGENCY, the obligation to pay shall be effective on the first (1<sup>st</sup>) day of the Acceptance Period. The failure of the Agency to issue an acceptance or rejection notice on or before the end of the Acceptance Period shall be deemed an acceptance of the Equipment or Services. In the event AGENCY issues a rejection notice, Contractor shall, as quickly as is practicable, correct at its expense all deficiencies caused by Contractor. AGENCY shall not unreasonably withhold or delay such acceptance or rejection.

6. Termination.

- a. Each party has the right to terminate this Agreement if the other party breaches or is in default of any material obligation hereunder which default is incapable of cure, or which, being capable of cure, has not been cured within thirty (30) days after receipt of notice of such default (or such additional cure period as the nondefaulting party may authorize).
- b. Provided that Contractor is in default of this Agreement, AGENCY may terminate this Agreement, in whole or in part, by written notice to Contractor if Contractor becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, or becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign, or has wound up or liquidated, voluntarily or otherwise.
- c. AGENCY may terminate this Agreement, in whole or in part, immediately, without notice, if: (i) AGENCY deems that such termination is necessary to prevent or protect against fraud or otherwise protect AGENCY's personnel, facilities or services, or (ii) Contractor is debarred or suspended from performing services on any public contracts.
- d. Should there be any protest of the RFP or the award of this Agreement to Contractor which continues past the Effective Date and which is ultimately determined adversely to AGENCY's RFP or award of this Agreement, then AGENCY may terminate this Agreement by written notice to Contractor specifying the termination date. Such termination shall not affect any Equipment or Services ordered prior to the effective date of termination.
- e. Upon the termination or expiration of this Agreement, Contractor promptly shall return to AGENCY all papers, materials and other property of AGENCY then in its possession, including but not limited to all work in progress as is appropriate in its then-existing form (in object code and source code to the extent such work is comprised of software, and in machine readable and printed formats to the extent such work is comprised of documentation) to AGENCY.
- f. If AGENCY terminates this Agreement in a manner that is not permitted hereunder, or if Contractor terminates this Agreement as set forth in subsection (a) above, then AGENCY will be responsible for the payment of all amounts remaining in the unexpired portion of the Term, plus any unpaid invoices unless those invoices are in dispute.

7. Funding. The parties acknowledge that institutions of the State of Georgia are prohibited from pledging the credit of the State. If the source of payment for the charges payable hereunder no longer exist or are determined to be insufficient, this Agreement shall terminate without further obligation of AGENCY as of that moment. The determination of AGENCY as to the occurrence of the events stated herein shall be conclusive; however, AGENCY represents that it will use reasonable care that the termination of this Agreement will not be frivolous, but rather, will result from a reduction of funding from the State funding authority.

8. Taxes. All fees payable to Contractor hereunder shall be net of any and all taxes that the Contractor may be required by law to collect in connection with the provision of the Services hereunder. Contractor shall be solely responsible for the payment of any and all taxes lawfully imposed upon it, including but not limited to taxes on property owned, leased or used by Contractor; franchise or privilege taxes on Contractor's business; gross receipts taxes to which Contractor is subject; and income taxes. By this paragraph, AGENCY makes no representation whatsoever as to the liability or exemption from liability of Contractor to any tax imposed by any governmental entity. Upon request, AGENCY will provide a certificate of tax exemptions which apply to this Agreement.

9. Disclaimer of Certain Damages. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF USE OR LOST BUSINESS, REVENUE, PROFITS, OR GOODWILL, ARISING IN CONNECTION WITH THIS AGREEMENT, UNDER ANY THEORY OF TORT, CONTRACT, INDEMNITY, WARRANTY, STRICT LIABILITY OR NEGLIGENCE, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. THE PROVISIONS OF THIS PARAGRAPH SHALL NOT APPLY TO PROVIDER'S OBLIGATIONS TO INDEMNIFY ANY INDEMNITEE.

10. Assignment. Contractor shall not assign or subcontract the whole or any part of this Agreement without AGENCY's prior written consent.

11. Waiver and Severability. The waiver by AGENCY of any breach of any provision contained in this Agreement shall not be deemed to be a waiver of such provision on any subsequent breach of the same or any other provision contained in this

Agreement. Any such waiver must be in writing in order to be effective, and no such waiver or waivers shall serve to establish a course of performance between the parties contradictory to the terms hereof. All provisions of this Agreement are severable, and the unenforceability or invalidity of any of the provisions will not affect the validity or enforceability of the remaining provisions. The remaining provisions will be construed in such a manner as to carry out the full intention of the parties. Section titles or references used in this Agreement have no substantive meaning or content and are not a part of this Agreement.

12. Applicable Law and Venue. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Georgia, U.S.A, without regard to its conflict of laws principles. Any lawsuit or other action based on a claim arising from this Agreement shall be brought in a court or other forum of competent jurisdiction within Fulton County, Georgia.
13. Notices. All notices, requests, or other communications (excluding invoices) hereunder shall be in writing and either transmitted via overnight courier, electronic mail, hand delivery or certified or registered mail, postage prepaid and return receipt requested to the parties at the following addresses. Notices will be deemed to have been given when received.

To AGENCY	To Contractor

14. Time is of the Essence. Time is of the essence with regard to performance of any Services under this Agreement, unless the parties agree otherwise in writing.
15. Title and Risk of Loss. Any leased Equipment is and shall at all times remain the sole property of the Contractor, and the Agency shall have or acquire no right, title or interest therein. All risk of loss or damage to the Equipment, including risk of transit, shall remain with the Contractor until it is accepted by Agency in accordance with Section 5 above. Insurance during shipment and until the Equipment is accepted by Agency is the responsibility of the Contractor.
16. Entire Agreement. This Agreement, including all Exhibits and documents incorporated hereunder, constitutes the entire agreement between the parties with respect to the subject matter and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written. No amendment to this Agreement shall be valid unless made in a writing of equal dignity and signed by both parties. No representation, request, instruction, directive or order, made or given by any official of AGENCY or of any agency of the State of Georgia, whether verbal or written, shall be effective to amend this Agreement or excuse or modify performance hereunder unless reduced to a formal amendment and executed as set forth above. Contractor shall not be entitled to rely on any such representation, request, instruction, directive or order and shall not, under any circumstances whatsoever, be entitled to additional compensation, delay in performance, or other benefit claimed for relying upon or responding to any such representation, request, instruction, directive or order.

IN WITNESS WHEREOF the parties have executed this Agreement on the date first written above.

**AGENCY**

**CONTRACTOR**

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_